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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

**Application Number: 09/173,109
Filing Date: October 15, 1998
Appellant(s): Witold A. Ziarno**

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**_____
Witold A. Ziarno, Reg. No. 39,888
For Appellant**

EXAMINER'S ANSWER

This is in response to Appellant's brief on appeal filed April 05, 2002.

(1) *Real Party in Interest*

The brief does not contain a statement identifying the Real Party in Interest. Therefore, it is presumed that the party named in the caption of the brief is the Real Party in Interest, i.e., the owner at the time the brief was filed. The Board, however, may exercise its discretion to require an explicit statement as to the Real Party in Interest.

(2) *Related Appeals and Interferences*

A statement indicating the related appeals and interferences is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.
Claims 21-41 are pending.

(4) *Status of Amendments After Final*

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief corresponds to the summary of invention contained in the application.

(6) *Issues*

The Appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

EXAMINER DISAGREES WITH STATEMENT OF GROUPING OF CLAIMS

Appellant's statement of the grouping of the claims is acknowledged; however, pursuant to 37 CFR 1.192(c)(7) and (c)(8), Appellant's brief fails to provide in the arguments the reasons for the grouping of the claims. Merely pointing out the claims is not an argument as to why the claims are separately patentable.

(8) *Claims Appealed*

A correct copy of the appealed claims appears in the Appendix of Appellant's brief.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

Title	Author	Copyright Date
<u>Applied Cryptography</u>	Bruce Schneier	1994

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21-41 stand rejected under 35 U.S.C. 103(a). These rejections are set forth in prior Office action, Paper No. 11, filed 08/14/2001, as follows:

6. Claims 21-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Schneier, Bruce APPLIED CRYPTOGRAPHY (New York: John Wiley & Sons, Inc. 1994) (herein referred to as "Schneier").

As per claim independent claim 21, Schneier (pp. 117-124; pp. 428-435; pp. 296-297; & p. 436) suggests:

"An Internet linked computer peripheral as an input device for a personal computer or workstation comprising in combination: a smart card reader for reading credit and/or debit card information from an information bearing smart credit and/or debit card; and a secure link to the Internet."

Schneier does not explicitly show "credit or debit cards" even though Schneier (pp. 296-297) suggests "credit or debit cards." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the Schneier's (pp. 296-297) "*smart card*" disclosure of would have been selected in accordance with "credit or debit cards" because smart credit and debit cards would have been notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 22, Schneier shows the system of claim 21. (See the rejection of claim 21 supra).

Schneier (pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests: "the secure link to the Internet comprises encryption means routine on the computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card information to the personal computer or workstation."

Schneier does not explicitly show "the secure link to the Internet comprises encryption means routine on the computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card information to the personal computer or workstation. . . ." even though Schneier suggests same.

"Official Notice" is taken that both the concept and the advantages of "the secure link to the Internet comprises an encryption routine on the computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card

information to the personal computer or workstation. . . .” because such concepts and advantages would have provided means to safeguard the credit and/or debit card information prior to transmission of the credit or debit card information.

As per claim 23, Schneier shows the system of claim 21. (See the rejection of claim 21 supra).

Schneier (pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests: “the secure link further comprises an encryption routine at the personal computer or work station encrypting the credit or debit card information prior to transmission of the credit or debit card information onto the Internet.”

Schneier does not explicitly show “the secure link further comprises an encryption routine at the personal computer or work station encrypting the credit or debit card information prior to transmission of the credit or debit card information onto the Internet. . . .” even though Schneier suggests same. multiple ways of encrypting.

“Official Notice” is taken that both the concept and the advantages of “the secure link further comprises an encryption routine at the personal computer or work station encrypting the credit or debit card information prior to transmission of the credit or debit card information onto the Internet. . . .” because such concepts and advantages would have provided means to safeguard the credit and/or debit card information prior to transmission of the credit or debit card information.

As per independent claim 24, Schneier (pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests: "providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation said smart card reading computer peripheral designed to send monetary transaction data to said personal computer or workstation for delivery onto the Internet, and securely sending monetary transaction data read by said smart card reading computer peripheral from the personal computer or workstation onto the Internet for further processing."

Schneier does not explicitly show "providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation said smart card reading computer peripheral designed to send monetary transaction data to said personal computer or workstation for delivery onto the Internet, and securely sending monetary transaction data read by said smart card reading computer peripheral from the personal computer or workstation onto the Internet for further processing."

"Official Notice" is taken that both the concept and the advantages of "providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation said smart card reading computer peripheral designed to send monetary transaction data to said personal computer or workstation for delivery onto the Internet, and securely sending monetary transaction

data read by said smart card reading computer peripheral from the personal computer or workstation onto the Internet for further processing. . . ." because such concepts and advantages would have provided means to safeguard the credit and/or debit card information prior to transmission of the credit or debit card information and also, because such concepts and advantages were well known in the art.

As per claim 25, Schneier shows the method of claim 24. (See the rejection of claim 24 above).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) shows elements that suggest "encrypting or coding at least a portion of the monetary transaction date entered by respective individuals prior to transmission of the monetary transaction data to the personal computer or the work station."

Schneier does not explicitly show "encrypting or coding at least a portion of the monetary transaction date entered by respective individuals prior to transmission of the monetary transaction data to the personal computer or the work station. . . ." even though Schneier (p. 28; pp. 329-330; pp. 70-71 & pp. 165-169) suggests same. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier (pp. 329), i.e., "**Message Digest**" would have been selected in accordance with "a portion of the monetary transaction date entered by respective individuals. . . ." of messages, because "**Message Digest**" capability would

have provided a fingerprint of the message that is unique. (See Schneier pp. 329-330); furthermore,

“Official Notice” is taken that both the concept and the advantages of “encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the monetary transaction data to the personal computer or the work station. . . .” because such concepts and advantages would have provided means to safeguard the credit and/or debit card information prior to transmission of the credit or debit card information and also, because such concepts and advantages were well known in the art.

As per claim 26, Schneier shows the method of claim 24. (See the rejection of claim 24 above).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) shows elements that suggest “encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the card information to the Internet.”

Schneier does not explicitly show “a portion of the monetary transaction data entered by respective individuals. . . .” even though Schneier (p. 28; pp. 329-330; pp. 70-71 & pp. 165-169) suggests same. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier (pp.

329), i.e., "*Message Digest*" would have been selected in accordance with "a portion of the monetary transaction data entered by respective individuals. . . ." of messages,

because "*Message Digest*" capability would have provided a fingerprint of the message that is unique. (See Schneier pp. 329-330).

Claim 27 is rejected for substantially the same reasons as claim 26.

Claim 28 is rejected for substantially the same reasons as claim 24.

Claim 29 is rejected for substantially the same reasons as claim 25.

Claim 30 is rejected for substantially the same reasons as claim 25.

Claim 31 is rejected for substantially the same reasons as claim 25.

As per claim 32, Schneier shows the method of claim 28. (See the rejection of claim 28 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests: "correlating transaction information other than the card information to

the encrypted debit or credit card information, and decoding the encrypted debit or credit card information at a device remotely located from the personal computers or work stations.”

Schneier does not explicitly show “correlating transaction information other than the card information to the encrypted debit or credit card information. . . .” even though Schneier (p. 34-39; pp. 70-71; pp. 59-69) suggests same. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the Schneier disclosure of “*timestamping*” would have been selected in accordance with “correlating transaction information other than the card information to the encrypted debit or credit card information. . . .” because “*timestamping*” would have been notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 33, Schneier shows the method of claim 28. (See the rejection of claim 28 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests: “entering a PIN number.

Schneier does not explicitly show “entering a PIN number. . . .” even though Schneier (p. 34-39; pp. 70-71; pp. 59-69) suggests same. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the

Schneier disclosure of a unique identifier would have been selected in accordance with “entering a PIN number. . . .” because unique identifiers would have been notoriously well known by one of ordinary skill in the art at the time of the invention.

Claim 34 is rejected for substantially the same reasons as claim 21.

As per claim 35, Schneier shows the kit of claim 34. (See the rejection of claim 34 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests a “remote computer . . . an acquiring bank computer, and a card account processor computer.”

Schneier does not explicitly show “a monitor, speakers, and a keyboard. . . .” even though Schneier suggests same. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with “a monitor, speakers, and a keyboard. . . .” because such a configuration would have been notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 36, Schneier shows the kit of claim 34. (See the rejection of claim 34 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests "the Internet."

Schneier does not explicitly show a "kit further comprising the Internet." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with a "kit further comprising the Internet. . . ." because the pervasiveness of the Internet would have been notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 37, Schneier shows the method of claim 32. (See the rejection of claim 32 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests "crediting or debiting an account."

Schneier does not explicitly show "crediting or debiting an account." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "crediting or debiting an account. . . ." because such procedures in electronic monetary transactions were notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 38, Schneier shows the method of claim 37. (See the rejection of claim 37 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests "sending a receipt comprising information representative of at least a portion of said monetary transaction data."

Schneier does not explicitly show "sending a receipt comprising information representative of at least a portion of said monetary transaction data." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "sending a receipt comprising information representative of at least a portion of said monetary transaction data. . . ." because such procedures in electronic monetary transactions of sending a confirmation or receipt associated with electronic monetary transactions were notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 39, Schneier shows the method of claim 34. (See the rejection of claim 34 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests "a multiplicity of personal computers."

Schneier does not explicitly show "a multiplicity of personal computers." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "a multiplicity of personal computers. . . ." because such implementation of multiple peripherals was notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 40, Schneier shows the method of claim 39. (See the rejection of claim 39 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests "a plurality of monitors."

Schneier does not explicitly show "a plurality of monitors." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "a plurality of monitors. . . ." because such implementation of multiple peripherals was notoriously well known by one of ordinary skill in the art at the time of the invention.

As per claim 41, Schneier shows the method of claim 40. (See the rejection of claim 40 supra).

Schneier (p. 34-39; pp. 70-71; pp. 59-69; pp. 428-435; pp. 296-297; p. 436, & pp. 165-169) suggests "a plurality of keyboards and speakers."

Schneier does not explicitly show "a plurality of keyboards and speakers." It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "a plurality of keyboards and speakers. . . ." because such implementation of multiple peripherals was notoriously well known by one of ordinary skill in the art at the time of the invention.

RESPONSE TO ARGUMENTS—707.07(f)

7. The following is an excerpt of MPEP 707.07(f): "Where the [A]pplicant traverses any rejection, the examiner should . . . take note of the [A]pplicant's argument and answer the substance of it."

Applicant's arguments filed 4/25/2001, "Amendment C" (paper #8) have been fully considered but they are not persuasive for the following reasons:

Applicant's amendments to the claims increased the breadth of the claims and did not change the substance of the claims on the merits; and

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Applicant's arguments against the 35 U.S.C. §103(a) rejections fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention; furthermore,

Applicant's amendments to claims and the addition of claims 22 & 23, necessitated the new grounds of rejection presented in this Office action. Accordingly,

THIS ACTION IS MADE FINAL. SEE MPEP §706.07(a).

(11) *Response to Argument*

In response to Appellant's argument which suggests that a prima facie case of obviousness has not been established in the prior Office Actions, now comes the Examiner's response:

NOTE: The Examiner in the prior Office Action (paper# 11) relied upon Official Notice evidence in the rejections of claims 22-25 & 28-31. According to MPEP 2144.03 "If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant

is charged with rebutting the well known statement in the next reply after the Office action in which the well known statement was made.” In this case Applicant failed to seasonably challenge the Official Notice evidence relied upon in the obviousness rejections of claims 22-25 & 28-31 because Applicant has to date not made a demand for evidence; furthermore, Applicant failed to make a demand for evidence in any request for discretionary reconsideration during prosecution, following the reliance upon Official Notice; therefore, “the well known statement is taken to be admitted prior art. . . .” Id., and the reliance on Official Notice in the obviousness rejections of claims 22-25 & 28-31 must be upheld because.”

According to MPEP 2143.01 “Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.” In the rejections of claims 21-41 in the prior office action, the examiner meets the requirements of the motivation test for modifying by citing from Schneier cogent reasons to modify the teachings of Schneier to produce the claimed invention; furthermore the Examiner identifies how the Schneier reference either teaches or suggests the elements of the claims of the instant invention. “There are three possible sources for motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the

knowledge of persons of ordinary skill in the art.’ *In re Ruffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). . . .” (See MPEP 2143.01). Furthermore, the Examiner relies partly on knowledge generally available to one of ordinary skill in the art of Internet based electronic commerce and asserts that the teachings of the Schneier reference combined with the knowledge of one of ordinary skill in the art either teaches or suggests all of the elements and limitations of the instant invention. See the rejections of claims 21-41 in the prior office actions. Contrary to the allegation in Appellant’s brief that the test is to “teach or fairly suggest” (Appellant’s brief p. 9), “‘The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01).

Appellant’s brief (page 13, line 35 and page 14, lines 1-2) alleges “The Examiner’s rejection . . . is based solely upon that which the Examiner asserts is ‘basic knowledge’ or ‘common sense’ to one of ordinary skill in the art. . . .” However, the Examiner reiterates that the obviousness rejections of claims 21-41 are based on the teachings of the Schneier reference combined with the knowledge of one of ordinary skill in the art at the

time of the invention and said rejections are not based on per se "basic knowledge" or "common sense" evidence.

Appellant's brief perpetrates a disservice upon the Honorable Board; for example, Appellant's brief page 15 Chart One by presenting out of context arguments that tend to show that "credit or debit" cards are not contemplated by the Schneier reference is misleading. Appellant's brief fails to show that in the obviousness rejection of claim 21, the Examiner's Office Action reads in part:

As per claim independent claim 21, Schneier (pp. 117-124; pp. 428-435; pp. 296-297; & p. 436) suggests:

"An Internet linked computer peripheral as an input device for a personal computer or workstation comprising in combination: a smart card reader for reading credit and/or debit card information from an information bearing smart credit and/or debit card; and a secure link to the Internet."

In this case, Schneier (p. 117, lines 13-14) discloses: *"The existence of credit and debit cards has greatly reduced the amount of physical cash flowing through our society. . . ."*

Schneier (p. 120, lines 13-20) discloses: *"Practical implementations of this protocol might require Alice to wait by the cash register during the merchant-bank interaction, much the same way as credit-card purchases are handled today. . . . Unless the merchant keeps a database of money orders it already received, the merchant will be fooled."*

Schneier (p. 297, lines 13-15) in view of the above disclosures of Schneier contemplates the use of smart cards to solve credit/debit card problems related to digital cash transactions in industry and commerce.

Appellant's brief (p. 30, pp. 34-36, pp. 39-40 & pp. 41-42) alleges that impermissible hindsight is relied on to modify the Schneier reference "in such a way as to reconstruct the Applicant's claimed inventions as claimed in claims 21-41. The motivation and indeed, the blue print is taken from Applicant's disclosure." This is not the case.

In response to Appellant's argument (p. 30, pp. 34-36, pp. 39-40 & pp. 41-42) that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In this case, the Examiner based

the obviousness rejections of claims 21-41 on the teachings of the Schneier as well as the knowledge of a person of ordinary skill in the art at the time of the invention. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

“Obviousness can only be established by . . . modifying [i.e., changing] the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. ‘The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’” *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” *Id.* In this case the prior Office Action supplies either “some teaching, suggestion, or motivation . . . [to modify] found either explicitly or implicitly in the reference or in the knowledge generally available to one of ordinary skill in the art.” *Id.*

Appellant’s brief (page 34, lines 1-6) alleges that the “Examiner concedes that Schneier fails to teach all of the elements claimed in claim 21. . . .”; however, this is not the case. The phrase “does not explicitly show. . . .” must not be incorrectly construed as a concession of a deficiency in the obviousness rejection. To the contrary, the phrase “does

not explicitly show. . . .” is merely the transition phraseology to the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459 and the 35 USC §103(a) Obviousness proposition that even though the Schneier reference does not explicitly recite the claimed elements and limitations verbatim, the reference does in fact suggest the claimed elements and limitations of the instant invention (please see the rejections of the prior Office Action which in the obviousness rejections presents citations from the Schneier reference that suggest the claimed elements and limitations); for example, as per claim 21, the prior Office Action recites:

As per claim independent claim 21, Schneier (pp. 117-124; pp. 428-435; pp. 296-297; & p. 436) suggests:

“An Internet linked computer peripheral as an input device for a personal computer or workstation comprising in combination: a smart card reader for reading credit and/or debit card information from an information bearing smart credit and/or debit card; and a secure link to the Internet.”

Schneier does not explicitly show “credit or debit cards” even though Schneier (pp. 296-297) suggests “credit or debit cards.” It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the Schneier’s (pp. 296-297) “*smart card*” disclosure of would have been selected in accordance with “credit

or debit cards" because smart credit and debit cards would have been notoriously well known by one of ordinary skill in the art at the time of the invention.

Therefore, taken in the context of the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459 and the 35 USC §103(a) obviousness rejection requirements, the prior Office Action recitations of "Schneier does not explicitly show. . . ." does not constitute an admission of any deficiency in the obviousness rejection; to the contrary such recitations merely provide the transition phraseology to the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459 and to the 35 USC §103(a) Obviousness proposition that even though the Schneier reference does not explicitly recite the claimed elements and limitations, the reference does in fact suggest the claimed elements and limitations of the instant invention; and therefore, the elements and limitations of the instant invention are rendered obvious.

In response to Appellant's argument that the Schneier reference is nonanalogous art, it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Schneier (pp. 117-124; pp. 428-435; pp. 296-297; & p. 436) shows that it is a

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reference both in the field of Appellant's endeavor or, as well as, reasonably pertinent to the particular problem with which the Appellant was concerned.

The arguments in Appellant's brief (pp. 36-38 & pp. 43-53) amount to a general allegation that the Schneier reference does not disclose elements and limitations of the instant invention. The arguments supply no substantial evidence to support said general allegation; therefore, the rejections of claims 21-41 must be sustained.


(12) Examiner's Answer, Conclusion



For all of the reasons stated above, Appellant's brief fails to overcome the 35 U.S.C. §103 obviousness rejections of claims 21-41 of the instant invention. For the above reasons, the rejections should be sustained.

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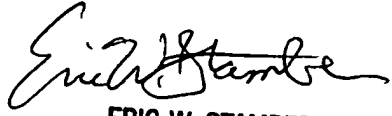
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John L. Young
June 15, 2002

JLY 06/13/2002 (conf.)
JPT (conf.) 
EWS (conf.) 

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